

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

V.

ANDREW N. YAO,

Defendant.

Criminal Action No. 06-27-GMS

UNOPPOSED MOTION FOR SENTENCING CONFERENCE

COMES NOW the United States of America, by and through Colm F. Connolly, United States Attorney for the District of Delaware, and Shannon Thee Hanson and Douglas E. McCann, Assistant United States Attorneys for the District of Delaware, and hereby move this Court to postpone the sentencing this matter, currently scheduled for September 26, 2007 at 9:30 a.m., for a period no longer than thirty (30) days, in favor of a sentencing conference with the parties on the date and time currently scheduled for the sentencing, for the purpose of resolving key sentencing issues in advance of the sentencing hearing, and for its reasons states as follows:

(1) On March 14, 2007, Andrew Yao, defendant herein, was convicted of two counts of bankruptcy fraud, in violation of 18 U.S.C. Section 152(2). His sentencing is scheduled for September 26, 2007 at 9:30 a.m.

(2) The parties timely received the Presentence Investigation Report (“PSR”) in this matter and each timely responded to the draft by September 12, 2007. Based on his letter response to the probation officer, the defendant appears to raise at least four substantive objections to the draft PSR: (1) use and application of the U.S.S.G. 2B1.1 guideline, as opposed to U.S.S.G. 2J1.3, and the related issue of the appropriate calculation of loss in this matter;

(2) application of a two point enhancement for the defendant's obstruction of justice through his perjury at trial; (3) the PSR's lack of a downward adjustment for acceptance of responsibility; and (4) the scope of the facts section of the PSR.

(3) It is government counsel's understanding that the PSR presently is being revised to calculate the defendant's applicable guideline range under U.S.S.G. 2J1.3, instead of U.S.S.G. 2B1.1. Because the Court's determination of the applicable guideline section for the defendant's convictions is the threshold issue for all remaining sentencing issues, the parties respectfully request a sentencing conference with the Court to resolve this issue. Depending upon the Court's ruling at the Sentencing Conference, for example, either party might determine that filing an upward or downward departure motion or variance request was required.

(4) The parties are prepared to go forward to sentencing within thirty (30) days of the proposed Sentencing Conference, consistent with the Court's calendar.

(5) Counsel for the government has spoken with defense counsel, who do not oppose this request or the Court's conducting a Sentencing Conference.

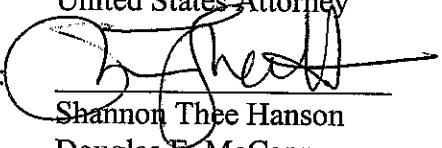
WHEREFORE, for the foregoing reasons, the parties respectfully request this Court continue sentencing in the above-caption case and hold a Sentencing Conference on September 26, 2007 at 9:30 a.m., the date and time currently scheduled for sentencing in this

matter. A proposed form of Order is attached.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

By:



Shannon Thee Hanson
Douglas E. McCann
Assistant United States Attorneys
1007 N. Orange Street, Suite 700
Wilmington, Delaware 19899
(302) 573-6277 x128

Dated: September 20, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

V.

ANDREW N. YAO,

Defendant.

Criminal Action No. 06-27-GMS

ORDER

For the reasons set forth in the government's Unopposed Motion for Sentencing Conference, IT IS HEREBY ORDERED this ____ day of September, 2007, that:

- (1) The currently scheduled sentencing hearing in this matter is continued;
- (2) The Court will hold a Sentencing Conference with the parties on September 26, 2007, at 9:30 a.m., and
- (3) Sentencing in this matter is continued until October _____, 2007.

The Honorable Gregory M. Sleet
Chief Judge